

April 13, 2017

Ex Parte

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

*Re: Business Data Services in an Internet Protocol Environment, WC Docket No. 16-143;
Special Access for Price Cap Local Exchange Carriers, WC Docket No. 05-25; AT&T
Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local
Exchange Carrier Rates for Interstate Special Access Service, RM-10593*

Dear Ms. Dortch,

On April 11, 2017, Eric Einhorn, Senior Vice President of Government Affairs and Strategy, Windstream Services, LLC (“Windstream”) and I, on behalf of Windstream, met with Jay Schwarz, Legal Advisor to Chairman Pai. We also met with Justin Faulb, Greg Capobianco, Christopher Koves, Joseph Price, Belinda Nixon, Lynne Engledow, William Kehoe, Irina Asoskov, David Zesiger of the Pricing Policy Division and Lisa Hone, Associate Bureau Chief of the Wireline Competition Bureau. On April 12, 2017, Tony Thomas, Chief Executive Officer of Windstream, spoke with Chairman Pai.

In his conversation with Chairman Pai, Mr. Thomas discussed the potential for the draft Order to result in near-term price increases both to Windstream, and its consumers, with little time to adjust. He urged the Chairman to provide for at least a three-year transition to allow special access purchasers to prepare for and adapt their operations to these substantial regulatory changes.

In our meetings on April 11, Mr. Einhorn and I summarized Windstream’s position on the business data services (“BDS”) proceeding as described in recent *ex parte* filings.¹ We noted that, as discussed further in those *ex partes*, the record support for fiber construction of up to a half mile was focused on the outer edge of potential deployment, and on services of higher bandwidth (and revenue) than a DS1 or DS3. We also noted that the inclusion of areas served by cable BIAS, as reported on Form 477, was inconsistent with the correct decision to exclude cable best efforts services from the BDS product market. We also discussed the fact that, when

¹ See Letter from John Nakahata, Counsel, Windstream, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 16-143, 05-25 & RM-10593 (filed Apr. 11, 2017) (“Windstream April 11, 2017 Ex Parte”); Letter from John Nakahata, Counsel, Windstream, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 16-143, 05-25 & RM-10593 (filed Mar. 27, 2017) (“Windstream March 27, 2017 Ex Parte”).

Ms. Marlene H. Dortch

April 13, 2017

Page 2 of 2

alternative transport facilities are not available, ILEC market power in the last mile channel termination facilities also extends to the transport facilities (including mileage charges) necessary to reach the point of interconnection (whether a POP or an NNI) between the ILEC's and the wholesale BDS purchaser's networks, as described further in my letter of March 27, 2017.²

We explained the need for a transition to allow both providers and customers to adapt and prepare for the new regulatory regime, including building additional facilities where that might be feasible. Moving into the new regime abruptly would be disruptive to both providers and their small and medium business customers, and to community anchor institutions.

We also explained the need to revise the grandfathering of existing contracts in Paragraph 163 of the draft Order, as explained in my letter of April 11, 2017. We note that in an ex parte letter filed yesterday, Verizon similarly proposed that "the Commission specify in its Order that if a contract tariff refers to or incorporates tariffed rates, terms, and conditions for special-access services, those rates, terms, and conditions in effect immediately before detariffing should continue to apply to the provision of the services for the remaining term of the contract, unless the parties' contract specifies otherwise."³ This should apply not just to detariffing, but also to existing contracts in all areas not already subject to Phase 2 pricing flexibility, in order to preserve the expectations surrounding that contract tariff or other contractual agreement built on the tariffed rate.

Sincerely,



John Nakahata
Counsel to Windstream

cc:	Chairman Pai	Christopher Koves
	Claude Aiken	Belinda Nixon
	Amy Bender	Joseph Price
	Jay Schwarz	
	Lisa Hone	
	Lynne Engledow	
	David Zesiger	
	William Kehoe	
	Irina Asoskov	
	Greg Capobianco	
	Justin Faulb	

² See Windstream March 27, 2017 Ex Parte at 24-25.

³ Letter from Curtis Groves, Assistant General Counsel, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 16-143, 05-25 & RM-10593 (filed April 12, 2017).